

CALIFORNIA COASTAL COMMISSION

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Staff:	NC-SF
Staff Report:	April 22, 2005
Hearing Date:	May 12, 2005

FINDINGS FOR NOTICE OF VIOLATION HEARING AND CEASE AND DESIST ORDER

**NOTICE OF VIOLATION AND
CEASE AND DESIST ORDER:**

CCC-05-NOV-01 and CCC-05-CD-03

RELATED VIOLATION FILE:

V-3-98-007

PROPERTY LOCATION:

Paso Cielo, La Selva Beach, Santa Cruz County
APNS 045-022-25, 045-022-27 and 045-022-30
(Exhibit F1 and F2)

PROPERTY DESCRIPTION:

Undeveloped property in La Selva Beach, adjacent
to Trestle Beach Homeowners Association condo-
minimum development and public state beach.

VIOLATION DESCRIPTION:

Unpermitted subdivision of 5.88 acres of land into
three parcels (APN 045-022-25 = 2.46 acres, APN
045-022-27 = 1.75 acres and APN 045-022-30 = 1.67
acres) without obtaining a coastal development
permit and in violation of Coastal Development
Permit No. P-79-117

SUBSTANTIVE FILE DOCUMENTS:

Coastal Development Permit Nos. P-2034 and
P-79-117; Notice of Violation File No. CCC-05-
NOV-01; Cease and Desist Order File No. CCC-05-
CD-03 and Background Exhibits as listed.

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15060 (c) (2)
and (3), and Categorically Exempt (CG §§ 15061 (b)
(2), 15037, 15038 and 15321)

I. SUMMARY

Staff recommends that the Commission find that a violation has occurred with respect to APNS 045-022-25, 045-022-27 and 045-022-30 (hereinafter “the subject parcels”). John J. and Julia D. King (“the Respondents”) illegally subdivided 5.88 acres of property into three separate parcels without first obtaining a Coastal Development Permit (“CDP”) from either the Coastal Commission or Santa Cruz County. Moreover, the illegal subdivision is inconsistent with the terms and conditions of Coastal Development Permit No. P-79-117, approved on July 30, 1979. If the Commission so finds, the Executive Director shall record a Notice of Violation in the office of the Santa Cruz County Recorder. Staff also recommends that the Commission issue a Cease and Desist Order directing the Respondents to cease from violating the Coastal Act and cease maintaining unpermitted development. The Order will direct the Respondents to cause the merger of the subject parcels into one parcel. The subject parcels total 5.88 acres of land. The subject parcels are located within the Coastal Zone. The subject parcels are located entirely within Santa Cruz County’s certified Local Coastal Program (“LCP”) permit jurisdiction. In 1998, Santa Cruz County asked the Coastal Commission to take the lead role in enforcing Coastal Act permit requirements for the subject parcels (Exhibit F3). Since that date the County has worked closely with the Commission to review applications related to the three parcels, and continues to be willing to process any CDP application that occurs as a result of Commission enforcement action.

The subdivision fits the definition of “development” contained in Section 30106 because it is a : *“...change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits...”* Subdivision without benefit of a coastal development permit has rendered a situation where the newly created three parcels of subdivided land have not been analyzed for impact under Chapter 3 policies. For example, there has been no Commission determination of adequate public services, consistency with public access and traffic circulation, consistency with environmentally sensitive habitat, water resources, flood control or geologic stability. The subdivision of land without a coastal development permit has not allowed review for consistency with the Santa Cruz County Local Coastal Program.

Because the subdivision constitutes development that has occurred without a coastal development permit as well as a violation of Coastal Development Permit No. P-79-117, Section 30812 of the Coastal Act allows the Executive Director to notify the property owners of the real property at issue of his intention to record a Notice of Violation, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owners object to the filing of the notice of violation, an opportunity will be given to the owners to present evidence on the issue of whether a violation has occurred. John J. and Julia D. King, the property owners, notified the Executive Director on March 11, 2005 that they objected to the filing and wish to have a hearing to present evidence to the Commission.

The Commission and the Respondents have spent approximately seven years discussing possible resolution of this situation and the Commission has tried to reach administrative

settlement with the Respondents to no avail. By letter in September and in November 2004, Commission staff notified the Respondents that they were prepared to record a Notice of Violation and take additional formal action if the Respondents did not agree to resolve the violation. Staff indicated that the Respondents could avoid formal action if they submitted an application to merge the subject parcels into one parcel with Santa Cruz County. Staff further indicated they would not object if the Respondents sought to apply for a permit to develop one residence on the merged lot concurrent with submittal of the merger application. The Respondents sought a one-month delay so that such an application could be submitted by January 22, 2005. Commission staff granted this request. Despite this, after the extended deadline had passed, Commission staff determined that the Respondents had not submitted a serious application to merge the parcels with the County. In fact, the County determined that the application submitted on January 25, 2005, was substantially incomplete (See Exhibit A of the applicant's exhibits attached to their Statement of Defense), and therefore the County refused to process it as an application.

Therefore, the Executive Director notified the Respondents by letter dated February 14, 2005 that he was prepared to record a Notice of Violation and to recommend that the Commission issue a Cease and Desist Order to resolve this violation.

The unpermitted development activity that has occurred on the subject parcels meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development has been undertaken without a coastal development permit, in violation of Public Resources Code 30600 and is inconsistent with Coastal Development Permit No. P-79-117. Therefore, the Commission may authorize the Executive Director to record a Notice of Violation on the subject parcels and may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

II. HEARING PROCEDURES

A. Notice of Violation

The procedures for a hearing on whether or not a violation has occurred are set forth in Section 30812 of the Coastal Act. Section 30812(c) and (d) provide the following direction:

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

The Commission shall determine, by a majority vote of those present and voting, whether a violation has occurred. Passage of a motion, per staff recommendation or as amended by the Commission, will result in the Executive Director's recordation of a Notice of Violation in the County Recorder's Office in Santa Cruz County.

B. Cease and Desist Order

The procedure for a hearing on a proposed Cease and Desist Order are set forth in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violators or their representatives. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violators or their representative may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185 and 13186, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the Order.

III. MOTIONS

Staff recommends that the Commission adopt the following two motions:

1A. Motion

I move that the Commission find that a violation of the Coastal Act has occurred as described in the staff recommendation for CCC-05-NOV-01.

1B. Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-05-NOV-01. The motion passes only by an affirmative vote of a majority of Commissioners present.

1C. Resolution That a Violation of the Coastal Act Has Occurred

The Commission hereby finds that the division of the subject parcels, addressed below in the staff recommendation for CCC-05-NOV-01, is a violation of the Coastal Act, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, and in violation of Coastal Development Permit No. P-79-117.

2A. Motion

I move that the Commission issue Cease and Desist Order No. CCC-05-CD-03 pursuant to the staff recommendation.

2B. Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

2C. Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order number CCC-05-CD-03, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and that development has occurred that is inconsistent with a permit previously issued by the Commission.

IV. PROPOSED FINDINGS

A. History of Violation

In 1998, Commission staff became aware of the creation of six separate parcels (APNS 045-321-23, 045-321-24, 045-022-24, 045-022-25, 045-022-27 and 045-022-30) without the required coastal development permit ("CDP") and in violation of CDP No. P-79-117. Only three of these parcels – APNS 045-022-25, 045-022-27 and 045-022-30 – are the subject of this enforcement action. Commission staff is pursuing separate enforcement action regarding the other unpermitted parcels that are no longer owned by the Kings. In 1998, the County of Santa Cruz was processing a coastal permit application (Application No. 96-0801) for a residence on one of the six parcels, APN 045-022-25, owned at that time by David Gelbart. The Commission received

documents from the public and from the County questioning the legality of the lot owned by Gelbart. The Commission sent a letter to the Santa Cruz County Planning Commission on March 24, 1998 (with a copy to Gelbart and to John King) questioning whether APN 045-022-25 was created in compliance with the Coastal Act (Exhibit F5). The Commission also sent a letter on April 27, 1998 to Gelbart, the Kings and other property owners, informing them that it had determined that 045-022-25, and the additional parcels identified above, were subdivided in violation of the Coastal Act and directing them how to remedy the violation (Exhibit A50). Ultimately, Gelbart abandoned the County CDP application for a residence on APN 045-022-25 and reconveyed his interest in the property to the Kings.

The Respondents, the Kings, owned a thirty-acre holding in the 1970's. In July 1976, King filed a CDP application seeking approval to subdivide thirty acres which they represented as consisting of three separate parcels, into four parcels, thus creating a new one-acre parcel. In August 1976, the Commission approved CDP No. P-2034, creating the proposed one-acre parcel, APN 045-022-34, from the thirty-acre King property. However, the Commission required that all the remaining acreage was to be recombined into one, twenty-nine-acre parcel (Exhibit F6, Resolution No. 76-640, p.3, Condition 1). The Commission's approval also required that portions of the twenty-nine acres be described as "Not A Building Site" (Id., Condition No. 1 and Exhibit A). The "Not A Building Site" description was to apply to what are now the unpermitted parcels addressed in this action. Thus, as a result of P-2034, there should have been only two parcels: the one-acre parcel which the Kings sold to another party (Finegan), Parcel A, and the recombined twenty-nine-acre parcel still owned by the Kings, Parcel B. At the time of this action, due to a prior CDP application that was withdrawn, the Commission was aware that King was planning a future condominium project on the blufftop portion of the property.

The Respondents then recorded on October 1, 1976 a final Parcel Map (for Minor Land Division 75-753) recorded as Vol. 22, Book 73, Parcel Maps (hereinafter "1976 Parcel Map") that designated four parcels, rather than two as authorized by the Commission in CDP No. P-2034 (Exhibit A9). Exhibit F,#7 shows the two parcels approved by the Commission and the four parcels identified on the 1976 Parcel Map.

In 1979, the Commission conditionally approved CDP P-79-117 for twenty-one condominium units on the twenty-nine-acre King property, creating one large common parcel west of the Southern Pacific railroad tracks to be owned by the condominium owners, a remainder parcel, consisting of the property east of the railroad tracks; and a beachfront parcel that the Kings proposed to grant to the State of California (See Exhibit F, #9). The project description and the Commission findings did not provide for creation of any other parcels. (See Executive Director's Recommendation, Exhibit A 26). The County's report of approval of the project states that the County approved a thirty-two unit condominium project on December 12, 1978 and describes the project as: "development which consists of the following elements: Parcel A: a 32 unit townhouse development with common open space" and "Parcel B: remainder to be retained by the owners." The County's report is included as Exhibit B to the Executive Director's Recommendation for CDP P-79-117, as approved 7/30/79 (Exhibit A26). Before the

permit was approved, King informed the Commission: “[t]he Trestle Beach Condominium project is not a conventional subdivision and therefore does not create traditional urban lots, but rather, dictates that thirty-two owners share in the maintenance of clustered structures on an undivided (29) acre parcel.” (Exhibit F, #10 (excerpts) and Exhibit B, Attachment 18 (entire report)).

As noted, the County approved a thirty-two-unit condominium project; the Commission reduced the number to twenty-one units, to provide for a two hundred-foot buffer between any structures and the adjacent agricultural property to the north. The CDP required the two hundred-foot buffer but did not authorize creation of a separate parcel consisting of the two hundred-foot buffer area. The CDP also authorized a sewage treatment facility on the property, but did not authorize creation of a small, separate parcel that would contain only this facility. In fact, when the CDP was approved, the final design and location of the treatment facility remained subject to regional water board approval.

On November 9, 1979, the Respondents recorded a Final Tract Map No. 781 for the twenty-nine acres that created six new parcels that were not approved by the Commission. (Exhibit F, #11). The unauthorized parcels are identified as Parcel B (containing the condominium access road), Parcel C (containing the condominium project sewage treatment plant) and Parcel D (the two hundred-foot agricultural buffer, and what is now identified as APNS 045-022-25, 045-022-27 and 034-022-30, which are shown on the Final Tract Map for the twenty-one unit condominium project as parcels or portions of remainders of parcels from 22-PM-77 (the 1976 Parcel Map). These separate parcels were not shown on the Tentative Tract Map. (Exhibit F, #8). The Commission and the County have not issued any coastal development permit to allow any of these parcels to become separate legal parcels under the Coastal Act. However, in 2000, the County issued a Certificate of Compliance determining that the parcel identified as APN 045-022-25, and designated as a remainder of a portion of parcel D from 22-PM-77 on Final Tract Map No. 781, was created in compliance with the Subdivision Map Act. The County has not issued certificates of compliance determining that APNs 045-022-27 and 045-022-30 comply with the Subdivision Map Act. The County has requested that the Coastal Commission take the action necessary to require compliance with the Coastal Act with respect to subdivision of these parcels (Exhibit F, #3). The Kings maintain that the subject parcels identified on Final Tract Map 781 as parcels or remainder portions of parcels from 22-PM-77 (the 1976 Parcel Map) are legally existing parcels under the provisions of the Subdivision Map Act as it pertains to remainder parcels.

In investigating this matter, the Commission has learned that several of the unpermitted parcels resulting from Tract Map No. 781 have been transferred to other owners. The condominium parcel, access road parcel and sewage treatment plant parcel were transferred to Trestle Beach Association, a general partnership that at least at one time included King as one of the partners. Due to foreclosure, Wells Fargo Bank acquired the two hundred-foot agricultural buffer parcel (APN 045-321-23) from Trestle Beach Association and then sold it to Shiu-Wen and Shaw-Hwa Huang (“the Huangs”). The Kings now retain ownership only of the three parcels addressed in this action (APNS 045-022-25, 045-022-27 and 045-022-30).

In addition, the Commission notes that the parcels designated in Final Tract Map 781 do not conform to the size and configuration of APN 045-022-27 and 045-022-30 shown on the County Assessor's Map. (See Assessor's Map, Exhibit F, #2). Final Tract Map 781 identifies two parcels in this general area of a different size and configuration, labeled as "Parcel 'B' 22-PM-77" and "Remainder Portion Parcel 'D' 22-PM-77". (Exhibit F, #11). The Assessor's Maps only identify parcels for tax purposes and do not identify legal parcel boundaries. It is not clear why the size and configuration of these parcels on the Assessor's Map is different from that of the Final Tract Map.

By letter dated April 27, 1998, Commission staff first notified the Kings that the subject parcels had been created without a CDP.¹ The Commission sent additional letters on July 2, 1998, September 10, 1998, October 20, 1998, April 28, 1999, October 6, 1999, June 18, 2001, July 19, 2001, June 18, 2004, November 22, 2004 to the Respondents asking them to resolve the matter. On or about November 6, 1998, Lee Otter of Coastal Commission staff received a letter from John King indicating that he would pursue the option of seeking a coastal development permit for the subject parcels. However, Mr. King never submitted the necessary Coastal Development Permit application (Exhibit B Attachment 37). Commission staff also met with the Kings' representatives on August 29, 2002, May 2, 2003 and September 9, 2003. In the 22 November 2004 letter, the Commission advised the Respondents of the Executive Director's intent to record a Notice of Violation against the subject parcels if the Respondents failed to submit a merger application with the County. The Respondents requested an extension of time until January 22, 2005 to submit such an application to the County, stating that no application-submittal appointments were available until that date. Commission staff granted a one-month extension for merger application submittal. On January 25, 2005, Commission staff determined that no such application had been submitted to the County². Therefore, on February 14 and again on February 18, 2005, the Executive Director informed the Respondents of his intent to record a Notice of Violation and to commence Cease and Desist Order proceedings to resolve the violation (Exhibits A61 and A62).

In a final attempt to resolve this matter informally, on March 25, 2005 Commission staff offered terms for a Consent Order to the Respondents. On March 28, 2005, the Respondents rejected the offered terms.

¹ The Commission also notified the owners of the other three parcels: Trestle Beach Homeowners Association and Shiu-Wen and Shaw-Hwa Huang, owners of APNS 045-022-24, 045-321-24 and 045-321-23. The Commission has pending violation investigations to resolve the unpermitted nature of these three parcels as well as the subject action against the Kings.

² The County notified the Commission that the Kings had attempted to submit a permit application on January 25, 2005, but that it was substantially incomplete and the County did not accept it for submission. The County's list of what was needed to complete the application is included in Exhibit A of this report.

B. A Violation of the Coastal Act has Occurred

The unpermitted development, which is the subject matter of this Notice of Violation and Cease and Desist Order, consists of the subdivision of land into three parcels: APNS 045-022-25, 045-022-27 and 045-022-30 without a coastal development permit by John J. and Julia D. King.

The subdivision meets the definition of “development” set forth in Section 30106 of the Coastal Act:

*“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, **including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code, and any other division of land, including lot splits,** except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use (emphasis added)*

Section 30600 of the Coastal Act provides:

- (a) *Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.*

Therefore the subdivision of land is development under the Coastal Act and requires a Coastal Development Permit. The Respondents did not obtain a coastal development permit for the subdivision and creation of the three parcels. Therefore, the Commission finds that unpermitted development as defined by Sections 30106 and 30600 of the Coastal Act has occurred.

C. Notice of Violation Recordation for Unpermitted Development

Section 30812(g) of the Coastal Act provides that, prior to invoking this section, that the Executive Director should attempt to use administrative methods for resolving the violation and that the Commission make the property owner(s) aware of the potential for the recordation of a Notice of Violation.

The Respondents have failed to agree to an administrative resolution of this matter for the past seven years, and have failed to submit a merger application with Santa Cruz County to resolve this matter. As noted above, the Commission has informed the Respondents of the potential for a Notice of Violation in letters dated June 18, 2004, November 22, 2004, February 14, 2005 and February 18, 2005. The Commission finds that all existing administrative methods for resolving

the violation have been utilized and the Respondents have been made aware of the potential for the recordation of a Notice of Violation.

Staff notes that the Respondents requested a postponement of the Notice of Violation hearing that was scheduled for April 13, 2005. Section 30812(c) of the Coastal Act governs timing of Notice Of Violation hearings and provides:

*If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at **the next regularly scheduled commission meeting** for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed **for cause** for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.*
(emphasis added)

The Commission does not agree that the Respondents' stated reasons constitute cause for postponement, but nevertheless, Commission staff agreed to postpone the matter to the May hearing. In return, Respondents agreed that they would not transfer the parcels until after the May hearing.

Since the Commission has established that development has occurred without benefit of a coastal development permit, the Executive Director shall record the Notice of Violation at the Office of the Santa Cruz County Recorder where this property is located.

After recordation of the Notice of Violation, if the Respondents remedy the subject violation, the Commission shall record a notice of rescission of the notice of violation pursuant to Section 30812 of the Coastal Act.

D. Basis for Issuance of Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in Section 30810 of the Coastal Act, which states, in relevant part:

- (a) If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the Commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*
- (b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division.*

As noted in subsection B of this report, the subdivision that created the three parcels meets the definition of "development." The defined development has occurred without a coastal development permit in violation of Public Resource Code 30600. The defined development has also occurred in violation of CDP No. P-79-117, and therefore an Order may be issued under

Section 30810 of the Coastal Act. The subject parcels are located within the coastal zone in the coastal permit jurisdiction of Santa Cruz County. The County Planning Director (Exhibit B Attachment 42) and County Counsel for Santa Cruz County asked the Commission to assume the lead in enforcing Coastal Act permit requirements for the creation of the subject parcels (Exhibit F3). Therefore, the Commission may issue a Cease and Desist Order under Section 30810(a)(1) of the Coastal Act for this violation.³ The Commission has determined that to obtain compliance with the Coastal Act in this matter, the Order should direct the Kings to merge their three illegally subdivided parcels into one parcel.

E. California Environmental Quality Act (CEQA)

The Commission finds that recordation of the Notice of Violation and issuance of a Cease and Desist Order to compel resolution of the Coastal Act violation on the subject parcels is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Notice of Violation and Cease and Desist Order are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

F. Determination of Facts

1. John J. and Julia D. King are the owners of 5.88 acres of property subdivided into three parcels adjacent to Paso Cielo Road, La Selva Beach, Santa Cruz County (identified by the County as APNS 045-022-25 = 2.46 acres, 045-022-27 = 1.75 acres and 045-022-30 = 1.67 acres).
2. The 5.88-acre property is located within the Coastal Zone for the State of California.
3. John J. and Julia D. King subdivided 5.88-acres of property causing the creation of these parcels, APNS 045-022-25, 045-022-27 and 045-022-30 without a Coastal Development Permit and in violation of CDP No. P-79-117.
4. Under the Coastal Act, such subdivisions are development and require a Coastal Development Permit.
5. There is substantial evidence that a violation of the Coastal Act has occurred.

³ Section 30810(a)(1) provides, in addition to the section quoted above: “The order may be also issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances: (1) The local government or port governing body requests the commission assist with, or assume primary responsibility for, issuing a cease and desist order.”

6. Commission staff notified the Kings beginning in April 1998 that the unpermitted subdivision had occurred without the required Coastal Development Permit, in violation of the Coastal Act.
7. No exemption from the permit requirements of the Coastal Act or the County's LCP applies to the unpermitted development regarding the subject property.
8. The Executive Director has informed John J. and Julia D. King of the potential for a recordation of a Notice of Violation and has sent the Respondents both a notification of intention to record a Notice of Violation pursuant to Section 30812 and a notification of intention to commence a Cease and Desist Order proceeding under Section 30810 of the Coastal Act.

G. Prior Attempts to Resolve

The Respondents have been given at least seven years to resolve this violation without the Commission taking formal action, and have failed to do so. In a letter dated June 18, 2004, Commission staff presented a proposal to the Respondents (Exhibit A58), which would have avoided formal action. Staff proposed that the Respondents recombine the three illegal parcels into one legal parcel, which would be subject to any restrictions and conditions as specified in CDP No. P-79-117. After the Respondents' recombination application had been approved and recorded by Santa Cruz County, the violation file would have been closed. By letter dated July 30, 2004, Respondents' attorney indicated that the Kings would reluctantly agree to the Commission's request to merge the subject parcels pursuant to a condition that the Kings be allowed to pursue a CDP from the County for one new single-family dwelling plus an accessory structure (Exhibit A59). However, the Kings proposed to condition the merger and resolution of the violation on obtaining all entitlements required to carry out their proposed residential development. They further indicated that if they later chose not to undertake the proposed development that they would not effect merger of the three parcels. Finally, the Kings insisted that the Commission must close its pending violation file before they would pursue merger. On November 22, 2004, Commission staff informed the Kings they have the right to pursue any development they wish under the Coastal Act (Exhibit A60). Clearly this is separate and distinct from their obligations to comply with the Coastal Act and their legal obligation to resolve this long outstanding violation. There are no legal grounds to require closing a violation before it has been resolved.

In the 22 November 2004 letter, Commission staff rejected the offered settlement by the Respondents. Staff indicated that they had delayed their response to the 30 July 2004 offer because the Kings had indicated at that time that they had begun preliminary discussions with Santa Cruz County regarding development. Staff verified that the Kings had initially scheduled an appointment with the County to take place at the end of August 2004. The Kings already had a pending but incomplete CDP application, which had been submitted, to the County for residential development on APN 045-022-25 sometime ago. That application did not seek authorization for the subdivision creating the parcel. On August 23, 2004, the County sent the

Commission a copy of a letter sent to the Kings, indicating that the County considered the pending incomplete CDP application for APN 045-022-25 “abandoned”. In late October 2004 Commission staff discovered that the Kings had not actually met with County staff and had not submitted any new CDP application with the County.

Thus, the 22 November 2004 letter sent by Commission staff rejected the counter settlement offer by the Respondents, confirmed that the Respondents had not submitted an application with the County and offered new terms for settlement consideration. Commission staff indicated that the subject parcels should still be merged to resolve the violation. Commission staff also clearly noted, as a separate matter, the Kings were free to pursue any new development they desire with the County. Staff also indicated that the Kings could pursue a proposal to merge the three illegal parcels concurrent with a proposal to develop the merged parcel with residential development. Staff indicated that the Kings would still have to submit a CDP application with all the required submittals and analysis of resource impacts necessary to complete a County CDP application, and indicated that Commission staff did not know whether such an application would be approvable under the legally applicable County LCP policies. Staff also advised the Kings that the Commission reserved its right to appeal such a new CDP application. Commission staff asked that, to avoid formal action, the Kings provide evidence of submittal of a complete CDP application that proposed merger of the three illegal parcels into one (and possible additional new development proposed on the merged parcel if they so desired) no later than December 31, 2004.

By letter dated December 22, 2004, Respondents’ attorney confirmed that the Kings had decided to apply to both merge the parcels in question and to construct new development on the merged parcel. The letter acknowledged a previous telephone discussion with Commission staff wherein the Kings indicated the County could not meet with them to submit a CDP application until January 22, 2005. The letter confirmed that Commission staff had agreed to a one-month extension for this reason, and confirmed that the Kings had until January 22, 2005 to submit the CDP application for merger and new development.

However, the Kings did not meet the extended deadline date. On January 26, 2005, according to County staff, the Kings’ representative, Richard Emigh, met with the County to submit a CDP application. The County determined that the CDP application presented was so incomplete that the County could not accept it for consideration. As exemplified in Exhibit A (see initial pages of Exhibit A) of this staff report, the CDP application did not include numerous technical reports that the County had previously informed the Kings were required.⁴ The Kings’ CDP application did not even include site plans for the proposed new development.

Therefore the Executive Director informed the Kings of his intention to proceed to record a Notice of Violation and conduct a Cease and Desist Order hearing, by letter dated February 14,

⁴ A letter from the Kings’ attorney dated 30 July 2004 mentioned that Santa Cruz County informed the Kings that, among other things, a geologic report review, soils report review, preliminary grading review, and archaeological site check were necessary.

2005 and by letter dated February 18, 2005. Even after announcing formal action, Commission staff attempted to negotiate a Consent Order with the Respondents to no avail. The Respondents have still not submitted a complete CDP application to the County. Thus, the Commission must take formal action to prevent the Respondents from selling the illegal parcels and potentially involving innocent third-party purchasers, and to ensure resolution of this long outstanding Coastal Act violation.

H. Violators' Response to Commission NOI

The Respondents' attorney submitted an objection to the recordation of a Notice of Violation, requested a hearing on whether or not a violation had occurred, requested a postponement of the scheduled Notice of Violation and Cease and Desist Order hearing until May 2005, and submitted a Statement of Defense form and attachments totaling over 62 exhibits on March 11, 2005, which is included as Exhibit A to this staff report. In this correspondence, the Respondents' attorney also stated a willingness to negotiate a possible Consent Order. As noted above, these discussions were not successful. As noted, Commission staff agreed to postpone this matter until the May 2005 Commission hearing. Respondents have submitted additional attachments (See Exhibits B, C, D and E to this staff report) as well as scheduled a new application appointment with the County to take place on May 19, 2005. The Respondents have asked the Commission to suspend enforcement proceedings until their application has been finally acted upon.

1. Postponement of Proceedings

The Respondents still request a postponement of the hearing on the scheduled Cease and Desist Order proceeding and the Notice of Violation because they intend to file an application with the County for a coastal development permit to merge the parcels and build a residence (Exhibit D).

Response:

The subject violation has remained unresolved since 1998 despite repeated notice to Respondents and Commission requests to resolve the violation. These have not resulted in resolution of the violation. Although Respondents have an appointment for filing their application with the County later in May, the outcome of such an application is entirely speculative. The Kings could decide at any time to abandon the application. If that occurred, the violation would remain unresolved. Moreover, the Kings might sell one or more of the parcels, which would make a resolution of the violation more difficult. Therefore, postponement is not appropriate.

2. Submission of additional materials and Incorporation by reference of Commission and County files

Respondents' 11 March 2005 letter also states:

In addition to the materials attached to the completed Statement of Defense, therefore, we incorporate by reference all letters, plans, maps and other documents contained in both the Coastal Commission's files and the files of the County of Santa Cruz that pertain to the above-referenced Assessor Parcel Numbers. We also reserve the right to submit additional materials, arguments and declarations of percipient witnesses and other persons on behalf of the Kings.

Response:

Commission staff agrees that all non-privileged documents in the Coastal Commissions files pertaining to this matter are part of the administrative record. However, Respondents cannot, through that statement, incorporate by reference all documents in Santa Cruz County 's files pertaining to this matter into their Statement of Defense. This is too vague and undefined and does not allow the Commission to adequately be informed about what record is before them. If they want to ensure that the administrative record on this enforcement matter includes a particular document, map, plan, etc., they should specifically identify the document and provide a copy of it for the Commission's review and consideration. Moreover, the Commission notes that the Respondents' Statement of Defense includes over sixty-two Exhibits, and the Respondents have submitted additional documents augmenting that number to over one hundred and thirty documents (See Exhibits B, C, D, and E); therefore it appears that the Respondents have in fact included copies of the documents contained in Coastal Commission and County files that they have determined may be relevant. The Commission has provided access to its files to the Respondents and allowed Respondents' attorney access in 2002-2003 to review the files and make copies of pertinent documents found therein. The Respondents have had more than enough time to review files and make copies of relevant documents they deem necessary to voice their objections to this enforcement proceeding.

Submission of materials for a Cease and Desist Order proceeding is governed by Section 30810 of the Coastal Act and Section 13181 of Title 14, California Code of Regulations, entitled "Commencement of Cease and Desist Order Proceeding before the Commission." Subdivision (a) of Section 13181 provides in relevant part:

*If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a cease and desist order proceeding before the commission by providing any person whom he or she believes to be engaging in development activity as described in Section 30810(a) of the Public Resources Code with notice of his or her intent to do so... The notice of intent shall be accompanied by a "statement of defense" that conforms to the format attached to these regulations as Appendix A. **The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein.***

which date shall be no earlier than 20 days from transmittal of the notice of intent. (Cal. Code of Regs., title 14, § 13181, subd. (a); emphasis added)

The regulations (at Cal. Code of Regs., Title 14 Section 13181, subd. (b)) go on to specifically provide that any extension of time for submittal of the Statement of Defense must be based on a written request, submitted prior to the deadline for submittal, and based upon a demonstration of “good cause,” and that any extension applies only to those specific items the Executive Director identifies. No such request or showing has been made in compliance with these requirements, and therefore, none could have been granted.

The defense form requirement is not an empty exercise (See e.g., *Horak v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) (“When administrative machinery exists for the resolution of differences...such administrative procedures are [to be] fully utilized and exhausted.”) The Coastal Commission’s cease and desist order hearings are “quasi-judicial.” Thus, if the Coastal Commission is to make findings of fact and conclusions of law in the form of an adopted Staff Report, the Respondents must inform the Commission, precisely and in writing, which evidence and defenses they wish the Commission to consider before making its decision on whether or not to issue a Cease and Desist Order. The Commission should not be forced to guess which evidence and defenses the Kings want the Commission to consider. Section 13181, subdivision (a) is specifically designed to serve this function of clarifying the issues to be considered by the Commission. After receipt of the Statement of Defense, under Section 13181 (b) of the Commission’s regulations, the Executive Director must prepare a written recommendation to the Commission that includes all defenses and mitigating factors raised by the Respondents, any rebuttal evidence to such defenses and mitigating factors, as well as summary and analysis of any unresolved issues. If the Respondents have not identified all defenses and mitigating factors in their Statement of Defense, then it is not possible for the Executive Director to prepare a written recommendation for the Commission that complies with this regulatory direction. Therefore the Respondents may not omit mention of certain evidence or defenses in their Statement of Defense, and then seek to belatedly present such evidence or defenses to the Commission. This would deprive the Commission of the opportunity to receive the Commission staff’s analysis and a recommendation regarding the issues. Further, it would not be conducive to a proceeding where all issues are fairly presented, analyzed and considered, and an accurate determination is made.

Nevertheless, in this instance, Commission staff has accepted submittals from the Kings on April 7, April 12 and April 15, 2005.

Violators’ Defenses and Commission’s Response

The Kings’ attorney has submitted a Statement of Defense form with 62 supplemental Exhibits (See Exhibit A, Exhibits 1 through 62). Respondents have also submitted additional documents and letters (See Exhibits B through E). The defenses raised in these submittals are discussed below.

General Denial

Respondents deny that unpermitted development has occurred on the subject parcels, that the subject parcels were illegally subdivided and created without benefit of a CDP, that the Coastal Commission did not authorize Final Tract Map No. 781, and that Commission staff included any time deadline for CDP submittal in its 18 June 2004 letter.

Commission Response

Even though the Respondents have submitted voluminous amounts of exhibits with their Statement of Defense and in later submittals, they fail to demonstrate how the subdivision of 5.88 acres into the three parcels has been authorized by a CDP. They also have failed to demonstrate Commission approval of Final Tract Map No. 781.

The following paragraphs summarize the more specific defenses contained in the Statement of Defense, and the Kings' letter dated April 15, 2005, set forth the Commission's response to each defense.

Kings' Defense: Legality of Parcels

1. **"...An examination of the pertinent materials and applicable law, however, clearly shows that the Subject Parcels were created in accordance with the permits approved by the Coastal Commission. Even if this were not the case, relevant documents and percipient witnesses have made evident that the Coastal Commission was fully aware of the subdivisions of the site in question and thus *de facto* approved those subdivision actions; the Kings have proceeded in reliance on that approval since that time.**

Commission Response:

There have been several unpermitted actions taken by the Respondents, which collectively subdivided 5.88 acres of property into the three illegal parcels. As explained in detail above, the Commission has not approved the subdivision into three parcels in a CDP. The Commission has issued two CDPs for parcels owned by the Respondents, and has determined "no substantial issue" on an appeal of a County CDP to repair and maintain a culvert pipe located on one of the subject parcels. The original placement of the pipe was approved in P-79-117 before the Kings illegally created APN 045-022-30. In August of 1976, the Commission approved P-2034 for the creation of a one-acre parcel from an existing eight-acre parcel, which was part of a thirty-acre holding owned by the Kings. The legally created one-acre parcel, APN 045-022-34 was approved (Parcel A) and all the remaining acreage was to be recombined into one parcel, a single twenty-nine-acre parcel (Parcel B). Thus, after this August 1976 CDP action there should have been only two parcels: the one-acre parcel (which the Commission agrees was legally subdivided) and the combined twenty-nine-acre parcel. The Kings subsequently

recorded on October 1, 1976 a parcel map that identified four parcels rather than two, in violation of P-2034 and without the authorization of the Commission.

The second CDP application, P-79-117, was for thirty-two condominium units on the larger King parcel (noted in the staff report for the CDP as twenty-nine acres). The approved project description and Commission findings of fact do not mention, much less create or authorize any other parcels beyond the parcel occupied with the approved twenty-one-unit condominium development west of the railroad tracks, the remainder of the property east of the railroad tracks, and the beachfront property proposed to be transferred to the State of California. The Kings subsequently recorded Final Tract Map No. 781 in violation of the Commission's CDP action approving the condominium development. The Final Tract Map created a separate and different Parcel B (APN 045-022-24 now owned by Trestle Beach Homeowners Association), Parcel C (APN 045-321-24 now owned by Trestle Beach Homeowners Association) and Parcel D (APN 045-321-23 now owned by the Huang). None of these parcels had been approved through a CDP permit or amendment to P-79-117. At the time of the 1979 recordation, what eventually became APN 045-022-025, APN 045-022-27 and APN 045-022-30 (owned by the Kings) were also identified on Final Tract Map No. 781 as portions of remainder parcels from the prior parcel map recorded in 1976. In December 1992, the Kings described for the first time the metes and bounds of APN 045-022-25, when they sold this parcel to David Gelbart. The creation of APN 045-022-25, 045-022-27 and 045-022-30 was not approved pursuant to a CDP.

In 1995, APN 045-022-30 appears as a described legal parcel by the Kings in a CDP application to repair and maintain a culvert in existence on the parcel. The Commission considered an appeal of a County CDP to repair the culvert (A-3-SC0-85-95), and determined that no substantial issue exists with respect to the appeal of the County's CDP action. The Commission's action on Appeal No. A-3-SCO-85-95 had nothing to do with parcel validity; in fact it merely addressed whether or not a County permit issued for culvert repair was appealable to the Coastal Commission. The Commission's involvement in the appeal does not establish that the Commission had knowledge of the Kings' unpermitted parcel creation since the Commission's scope was limited to whether or not the culvert repair permit met the criteria for appeal to the Commission. As explained above, the Commission learned of the unpermitted parcel creation when the County received a CDP application to build a residence on one of the parcels in 1998.

Exhibit A, No. 26 of the Respondents' attachments (Exhibit A) is a copy of CDP No. P-79-117 issued to the Kings after they met the conditions of approval attached to the CDP. The Kings signed and dated the CDP acknowledging receipt and accepting its contents on August 16, 1979. Exhibit B of CDP No. P-79-117 includes a letter from Santa Cruz County describing approval of the Tentative Tract Map for the Trestle Beach Subdivision and further describes the project as a development consisting of Parcel A: a 32 unit townhouse development with common open space⁵ and Parcel B: a remainder to be retained by the owners, the Kings. Thus,

⁵ The final permit action taken by the Commission reduced the approved condominium units from thirty-two to twenty-one units. That fact is not at issue in the subject matter.

the Commission issued CDP No. P-79-117 with the understanding that only two parcels resulted from the CDP action, as evidenced by the issued CDP contained in Exhibit A, No. 26.

The Kings appear to rely on the County's determination that the subject parcel APN 045-022-25 was legally created in compliance with the Subdivision Map Act, to support their assertion that the subdivision into three parcels did not violate the Coastal Act. However, the Coastal Act imposes independent legal obligations that must be followed prior to conducting development in the coastal zone, including subdivisions. The Kings were certainly aware of these Coastal Act obligations, yet they proceeded to record a parcel map and tract map that subdivided property without authorization in a CDP. Compliance with the Subdivision Map Act does not eliminate the need to obtain a coastal development permit to authorize all subdivisions after the effective date of the Coastal Act (which in this location was February 1973).

Kings Defense: Selective Enforcement

The Respondents have argued that the Commission is being selective in its enforcement of CDP requirements and that the Commission has failed to enforce on persons similarly situated. The Respondents have specifically raised unpermitted parcels owned by the Trestle Beach Homeowners Association and by the Huangs.

Commission Response

These parcels, APNS 045-321-24, 045-022-24, 045-321-23, have also been subdivided without benefit of a CDP and in conflict with CDP No. P-79-117, and the Commission opened violation investigations concerning these parcels at the same time as they contacted the Respondents. In recording a final tract map in conflict with CDP No. P-79-117, the Kings have helped to create these additional unpermitted land divisions. The Commission continues to investigate and seek to resolve these cases. The Commission notes that neither of the landowners involved in the additional parcels have attempted to submit CDP applications with the County to develop these parcels, like the Respondents have done with their property holdings. Resolution of these cases will continue. It is incorrect to suggest that the Commission is not enforcing permit standards on these illegally created parcels.

Kings Defense: Inordinate Delay

The administrative record for this dispute is lengthy, complicated, and very difficult to sort through due to the fact that many of the contested events occurred approximately thirty years ago...given the inordinate delay between the creation of the Subject Parcels and the Coastal Commission's decision to persecute the Kings for merely attempting to use and enjoy these parcels, it would be inequitable for the Coastal Commission to proceed with its claim of violation...

Commission Response

The Commission again notes the very significant amount of time and staff resources that has been spent trying to resolve this matter informally with Respondents without success. This clearly cannot be a reason for avoiding an enforcement action. In addition, the length of time that unpermitted development has existed has no bearing on enforcement of the permit requirements of the Coastal Act. The Commission's enforcement program prioritizes and responds to violations as they are brought to its attention and based on imminent threats to coastal resources. The Commission first learned of this violation in 1998 when it received contact regarding the illegality of APN No. 045-022-25. The Commission responded with a letter to the Respondents (and others: Trestle Beach Homeowners Association and the Huangs), and indicated that the parcel(s) had been illegally created without a CDP (Exhibit F5). For seven years, the Commission and the Kings have attempted resolution of this matter. In the last year, the Commission has urged the Kings to submit a merger application to the County to no avail. The Commission must act to halt the continuing nature of this violation and to bring this matter to a close.

The assertion of unreasonable delay and prejudice implies a defense based on the doctrine of laches. The doctrine of laches does not apply in this case. It is well settled that the equitable defense of laches "will not ordinarily be invoked to defeat policy adopted for the public protection" (*City of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 646⁶). In this case, the cease and desist order proceedings were initiated to bring the subject violation into compliance with the Coastal Act, which was adopted to protect coastal resources for the benefit of the public.

Even if the doctrine were applicable to this proceeding, it is well established that "laches is an equitable defense that requires *both* unreasonable delay *and* prejudice resulting from the delay. The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors." (*Mt. San Antonio Comm. Coll. Dist. V. Pub. Emp. Rel. Bd.* (1989) 210 Cal.App.3d 178.) The Respondents have contributed to delay in this proceeding, because prior to the commencement of formal enforcement proceedings, the Respondents have failed to meet deadlines for submittal of a CDP application regarding the unpermitted development. The Respondents cannot show any prejudice from the Commission's failure to bring this action at any earlier date.

RESPONSE TO ARGUMENTS AND DEFENSES IN KINGS' APRIL 15, 2005 LETTER

1. Respondents argue that the Commission was aware of and implicitly accepted the four-parcel subdivision effected by the parcel map recorded October 1, 1976, prior to Commission action on CDP No. P-79-117 in 1979.

⁶ Accord: *Morrison v. California Horse Racing Board* (1988) 205 Cal.App.3d 211, 219 ("Where there is no showing of manifest injustice to the party asserting laches, and where application of the doctrine would nullify a policy adopted for the public protection, laches may not be raised against a governmental agency.")

Commission response:

Respondents argue that when the Commission acted on CDP No. P-79-117 in 1979, the Commission knew that Respondents had violated the conditions of the permit the Commission approved in 1976 (CDP No. P-2034) for subdivision of the Kings' property into *two* parcels of one acre (which was sold and developed) and twenty-nine acres, by recording a parcel map that in fact identified *four* parcels. (See Exhibit F, #7). Despite this violation, the Commission went on to approve a new subdivision of the same twenty-nine acres in CDP No. P-79-117 in 1979, to authorize development of the Trestle Beach condominiums. The Commission's action on CDP No. P-79-117 did not implicitly accept, or grant retroactive approval of, the unauthorized four parcel subdivision that was recorded by Respondents in 1976. To the contrary, the Commission's action on P-79-117 approved a new subdivision of the Kings' remaining twenty-nine acres, thereby making the status of any earlier parcel map irrelevant, since those earlier parcel configurations were being replaced by the subdivision approved in the new permit. Kings' submittals and representations to the Commission support this. Prior to Commission action on CDP No. P-79-117, King submitted a report addressing concerns about growth inducement and stating: "[t]he Trestle Beach Condominium project is not a conventional subdivision and therefore does not create traditional urban lots, but rather, dictates that thirty-two owners share in the maintenance of clustered structures on an undivided (29) acre parcel." (Exhibit F, #10 (excerpts) and Exhibit B, Attachment 18 (entire report)). The report also states: "the parcel can be considered unique and therefore does not set a precedent for further development of vacant parcels in the surrounding area." (Id.). Thus, the Kings represented that the portions of the property that did not contain the condominium development, and that they did not quitclaim to the State, would remain undivided and undeveloped. The Kings' statements to the Commission before its action on CDP No. P-79-117 show an understanding by the Kings, and representation to the Commission, that the condominium project constituted all the development that would occur on the twenty-nine acres that the Kings owned. Those representations to the Commission directly conflict with their current position that the Commission has authorized or acknowledged the three legal, vacant parcels surrounding the condominiums, east of the railroad tracks, where they maintain that they are entitled to build more residential development.

The current enforcement action relates to three parcels that were illegally subdivided without authorization from the Commission and that conflict with the Commission's approval of CDP No. P-79-117. The fact that documentation showing a violation of the 1976 permit was provided to Commission staff does not provide a defense to this action.

2. Respondents argue that the Commission was aware of the six-parcel subdivision shown on Final Tract Map No. 781 recorded on November 9, 1979, prior to its approval of CDP No. P-79-117.

Commission response:

The Commission approved CDP No. P-79-117 on July 30, 1979, before the Final Tract Map No. 781 was recorded in November 1979. The Tentative Tract Map No. 781, which was available for Commission review before it approved CDP No. P-79-117, does not show all of the various separate parcels that are identified on the Final Map, rather it shows all of the twenty-nine acres divided into just two parcels: Parcel A and Parcel B. (*See Exhibit F, #8*). The County's findings for approval (attached to the Commission staff report for CDP No. P-79-117) also describe the project as Parcel A – the condominium project parcel and Parcel B – the remainder of the property. (Exhibit A26). In its action on CDP No. P-79-117, the Commission did not approve the various separate parcels identified in Final Map No. 781 (the “agricultural buffer” parcel, the access road parcel and the sanitation facility parcel), nor did it approve the separate parcels east of the railroad tracks that are identified as either a parcel or remainder of a portion of a parcel from 22-PM-73. These designations referring to the prior map, 22-PM-73, also *are not present* on the Tentative Tract Map. (Exhibit F, #8).

Respondents argue the Commission knew more than four parcels were being proposed because a parcel map had been submitted rather than a tract map. They argue that under the Subdivision Map Act, if the proposed subdivision created four or fewer parcels, only a parcel map would have been required. However, under the Subdivision Map Act, a tract map is required for a subdivision creating five or more parcels *or five or more condominiums*. (Government Code section 66426). The Kings' project proposed thirty-two condominiums, and the Commission approved twenty-one condominiums, so a tract map was required.

Respondents also assert that Les Strnad, a Commission staff member involved with CDP No. P-79-117 was aware that a separate legal parcel was required for the sanitation facility for the condominiums. The permit that the Commission approved already provided that the sanitation facility, which is east of the railroad tracks, would be on a separate legal parcel. The Commission approved a parcel west of the railroad tracks containing the condominiums, and a parcel consisting of the property the Kings owned east of the railroad tracks. Thus, pursuant to the Commission's approval of CDP No. P-79-117, the sanitation facility site was already on the separate parcel the Commission approved consisting of all the Kings' property east of the railroad tracks (the only other development authorized on this parcel is access road improvements). Therefore, there was no necessity for further subdividing the property east of the railroad tracks as occurred in the Final Tract Map. Furthermore, even if creation of the sanitation facility parcel identified on the Final Tract Map was necessary, there was no necessity to further subdivide the rest of the property east of the railroad tracks to create the three illegal parcels at issue in this action. The creation of the small sanitation facility parcel does not physically separate the rest of the property east of the railroad tracks into separate parcels. To the contrary, even after the illegal creation of the sanitation parcel, the three parcels at issue here (as well as the access road parcel) remained contiguous and need not be subdivided.

3. Respondents assert that the Commission learned of the illegal subdivision no later than 1980.

Commission response:

Respondents assert that handwritten Commission staff notes refer to specifics of Final Tract Map No. 781. Respondents do not indicate which notes they refer to or explain how a particular note indicates that the Commission staff was aware of the unpermitted subdivision. Staff notes referring to recordation of the final tract map only indicate that Commission staff knew that it was recorded. Commission notes also refer to detailed plans for drainage and grading for the project; however, these are separate plans and are not part of the final tract map.

As explained above, the requirement that the sanitation facility be on a separate parcel from the condominiums did not physically separate the rest of the property east of the railroad tracks and require that it be further subdivided to create the three parcels at issue here. Therefore, knowledge that the sanitation facility had to be on a separate parcel from the condominiums does not equate to knowledge that the Final Tract Map also identified as separate parcels the three parcels at issue here. In fact, Final Tract Map 781 does not show the parcels currently identified as APN 045-022-027 and 045-022-30 on the County Assessor's Map (used for tax purposes) in the size and configuration that is currently shown on the County Assessor's Map. It is not clear why the size and configuration of these parcels is different on the Assessor's Map and the Final Tract Map.

Respondents also refer to notes in the Commission's files indicating that at a meeting on some unknown date prior to 1986, Commission employee Les Strnad had confirmed that the permit for twenty-one condominiums had been issued and that he had inspected the development and found it to conform to the conditions of the CDP No. P-79-117. A reasonable interpretation of this record is that based on what Mr. Strnad observed during an inspection of the site, the condominiums were built in compliance with the permit conditions. This record does not reflect that Mr. Strnad examined the Final Tract Map and made a determination regarding whether the parcels created were authorized by the Commission permit. Respondents point to a document from Bramwell Company provided to the Coastal Commission in 1983, which appears to be an excerpt of an appraisal of the value of the Trestle Beach condominium project. This document states: "Mr. Strnad reported that the original development plans called for 32 units with the questioned 11 units to be built on subject Parcel D. The Coastal Commission deleted the questioned 11 units due to County Ordinances which require a 200' set-back from the agricultural pursuits adjoining the subject's northerly boundary." (Exhibit B, Attachment 40). This statement does not show that Mr. Strnad was aware that the Final Tract Map identified the two hundred-foot agricultural buffer as a separate legal parcel (Parcel D); it only shows that the person writing the report was aware of this. Later in the document, statements are attributed to Mr. Strnad to the effect that the condominium developer could apply for a permit amendment to build the eleven additional condominium units in the agricultural buffer area. If anything, this indicates that Mr. Strand understood that the agricultural buffer area was still part of the property

where condominiums were being built and more units could be constructed, if it was approved in a CDP amendment. Finally, this report also states: “the questioned 11 subject units were deemed to have no value impact, other than a possible token increment, on the subject property.” This indicates that the property owner did not assert at that time (approximately 1983) that the agricultural buffer property was a separate legal parcel that could be separately sold to a third party and developed in the future, because that would have added substantial value to the property.

There is no record that Commission staff was aware of the Kings’ illegal subdivision until 1998, when an application was submitted to the County to build a house on the parcel identified as APN 045-022-025. After receiving this information, Commission staff immediately notified the County and the Kings that the parcels at issue here were created in violation of the Coastal Act.

4. Respondents argue that even if the Commission did not approve a subdivision creating the parcels at issue in this action, it has clearly abdicated its right to challenge the subdivision.

Commission response:

Respondents assert that the Commission could have imposed a condition on CDP No. P-79-117 that required Commission review of the Final Tract Map prior to recordation, but instead the Commission relied on the County’s review. The Commission does not waive its right to enforce the terms and conditions of a CDP where after action on a CDP, the local government gives approval for the development with modifications that are inconsistent with the CDP. The Kings knew that the Commission did not approve creation of all the parcels reflected in Final Tract Map No. 781. The Kings could have applied for a CDP amendment to seek Commission authorization of these parcels, but did not do so. Accordingly, the Kings acted at their own risk when they knowingly recorded a Final Tract Map that created parcels that were not authorized by the Coastal Commission.

Respondents also argue that the Commission is barred from enforcing the Coastal Act in this matter because it did not challenge the Final Parcel Map within 90 days of recordation, the statute of limitations set forth in the Subdivision Map Act. Section 30600(a) of the Coastal Act states that, “in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit.” Thus, the fact that the County has accepted and recorded Final Map No. 781, which identifies parcels that the Coastal Commission did not approve, does not prevent the Coastal Commission from enforcing the requirements of the Coastal Act. Under California law, one public agency cannot by its actions prevent or impair another independent public agency from exercising its legal jurisdiction. (*California Tahoe Regional Planning Agency v. Day and Night Electric, Inc.* (1985) 163 Cal.App.3d 898.) The Coastal Act imposes separate and independent requirements for subdivisions in the coastal zone. This action is timely under the provisions of the Coastal Act

and those provisions control over the Subdivision Map Act. Therefore, timeliness of the Commission's actions under the Subdivision Map Act is not relevant. (See, *Ojavan Investors, Inc. v. California Coastal Commission* (1997) 54 Cal.App.4th 373, 388 (principles of statutory construction require a specific statute, such as the Coastal Act, to prevail over a general statute, such as the Subdivision Map Act)).

5. Respondents assert that the Commission is estopped from now claiming the Kings' parcels were illegally created.

Commission Response:

The Commission has been attempting to negotiate a resolution of this matter since it learned about the illegal subdivision when a proposal to build a house on APN 045-022-25 was submitted to the County in 1998. The Kings have not established that, prior to that time, the Commission knew or should have known about the illegal subdivision. Although Commission staff had some involvement with the property prior to 1998, it did not involve questions about the number of legal parcels or configuration of the parcels; nor were there any coastal permit applications for development on any of the illegal parcels until 1998. Moreover, even if the Commission knew or should have known about the illegal subdivision at an earlier date, the Kings have not identified any way in which they were harmed by the fact that the Commission did not assert illegality of APNs 045-022-25, 045-022-37 and 045-022-30 prior to 1998; accordingly, estoppel does not apply. Although they assert they are harmed because individuals involved with CDP P-79-117 are deceased, the Commission notes that Bill Van Beckum, the Commission employee with main responsibility for the application, and his supervisor, Les Strnad, are living and in fact, the Kings have submitted a letter from Mr. Strnad in this matter. Mr. Van Beckum, who is still employed by the Commission, indicates that when the Commission was considering CDP P-79-117, the Kings did not indicate they believed that the final tract map for the condominiums would also identify several separate legal parcels that could be separately sold and be the site of additional residential development in the future. Mr. Van Beckum also does not recall reviewing a final tract map, or being informed about a final tract map, for the condominium subdivision that identifies numerous separate parcels on the property that could be separately sold and developed with additional residences in the future. Mr. Van Beckum transferred to the Commission's San Francisco Office in January 1982, and was not responsible for issues regarding the King property or CDP P-79-117 after that time.

The Kings also argue that they deeded the beachfront property and donated \$30,000 for resource management in reliance on the 1976 Parcel Map. When the Kings deeded the beachfront property and donated those funds, they received the benefit of proceeding with the development of the Trestle Beach twenty-one-unit condominium project. As explained above, the Commission never approved the 1976 Parcel Map (which identified four parcels, in violation of CDP P-2034 which only authorized two parcels), nor did the Commission ever approve the various parcels identified in the 1979 Final Tract Map located east of the railroad tracks. As also explained above, at the time of the Commission's action on CDP P-79-117, the Kings did not disclose their assertion that the 1976 Parcel Map created parcels and/or

remainders of portions of parcels on the twenty-nine acres that would continue to exist and could be developed in the future, in addition to the condominiums. To the contrary, the Kings represented to the Commission that there were no other separate parcels where further residential development would occur on the twenty-nine acres they owned. If the Kings believed otherwise, they are responsible for any harm they suffered, because they failed to inform the Commission during its consideration of CDP No. P-79-117 of their assertions regarding existence of additional parcels that could be the site of additional development. Moreover, the Tentative Map for the condominium project does not reflect their claim to the continued existence of additional parcels and/or remainders of portions of parcels from the earlier parcel map. (Exhibit F, #8). Thus, any harm the Kings suffered, including any costs incurred in unsuccessful efforts to develop APN 045-022-25, resulted from their own actions, including misrepresentations to the Commission, failure to provide complete and accurate information during the Commission's consideration of CDP No. P-79-117, recording a Final Tract Map that differed substantially from both the Tentative Map and the subdivision that the Commission approved, and failure to apply for a CDP amendment to authorize the parcels identified on the Final Tract Map that were never authorized in a CDP. The fact that the Commission did not initiate enforcement action prior to 1998 resulted from these actions by the Kings; therefore, the Kings cannot demonstrate that they reasonably relied to their detriment on the Commission's inaction regarding illegality of the subject parcels prior to 1998. Moreover, the overriding public interest in protecting coastal resources and insuring orderly subdivision and development of property located in the coastal zone defeats the Kings' claims that the Commission is estopped from enforcing the Coastal Act in this matter.

6. Respondents assert that merger of the illegally subdivided parcels will not rectify the violation.

Commission response:

Merger of the three parcels reduces the potential for future development in this highly constrained area to one residence and provides flexibility to locate the development to minimize any potential environmental impacts. The property faces environmental constraints due to inundation from wave action (in the southern portion) and steep slopes leading to a ravine that contains a drainage course (northern portion). The merger of the three parcels also takes into account the fact that the other illegally subdivided parcels east of the railroad tracks – the access road parcel (APN 045-321-24) and the sanitation facility parcel (APN 045-321-24) -- are now owned by the Trestle Beach Association. Arguably, it might be an appropriate remedy to order the Trestle Beach Association and the Kings to merge all of these parcels, to achieve the one parcel east of the railroad tracks that the Commission approved. If this occurred, there would be no right to any further development on the parcel, since it would contain the access road and sanitation facility for the condominiums, and therefore would already have a productive use. This remedy would obviously be less favorable to the Kings. Commission staff is not recommending this remedy and instead seeks merger of the three illegal parcels owned by the Kings into one parcel. This merger would have no effect on the existence of the sanitation facility parcel (APN 045-321-24).

Staff recommends that the Commission issue the following Cease and Desist Order:

CEASE AND DESIST ORDER CCC-05-CD-03

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders John J. and Julia D. King and their agents, contractors and employees, and any person acting in concert with any of the foregoing (“hereinafter referred to as “Respondents”) to cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act.

Pursuant to Coastal Act Section 30810(b), Respondents are further ordered to cease and desist from any attempts to transfer the parcels identified as APNS 045-022-25, 045-022-27 and 045-022-30 into separate ownership.

In addition, the Commission orders the following:

- A. The Respondents must submit a complete application to merge the three parcels (identified by the County Assessor as APNS 045-022-25, 045-022-27 and 045-022-30) to the County of Santa Cruz within 30 days of order issuance. The Respondents will take all actions necessary to effectuate merger of the three parcels within 60 days of the effective date of this order issuance. Respondents shall submit all documents that will be recorded to effectuate the merger to the Commission’s Executive Director for review and approval prior to recordation.
- B. The Respondents must send a copy of the County recorded merger documents to the Executive Director, attention: Nancy Cave after recordation at the County.

I. Persons Subject to the Order

John J. and Julia D. King and their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject to the order is described as follows:

The 5.88 acres of land adjacent to Paso Cielo, La Selva Beach, Santa Cruz County, illegally subdivided into separate parcels (identified by the County Assessor as APNS 045-022-25, 045-022-27 and 045-022-30). Respondents own or control all three parcels.

III. Description of Unpermitted Development

The development that is the subject of the Cease and Desist Order consists of unpermitted subdivision into three parcels (identified by the County Assessor as APNS 045-022-25, 045-022-27 and 045-022-30) by John J. and Julia D. King.

IV. Effective Date and Term of the Order

The effective date of the order is the date of its approval by the Commission. The order shall remain in effect permanently unless and until modified or rescinded by the Commission.

V. Findings

The order is issued on the basis of the findings adopted by the Commission at the April 2005 hearing, as set forth in the attached staff report.

VI. Compliance Obligation

Strict compliance with the order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the order including any deadline contained in the order will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

VII. Deadlines

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

VIII. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the order is issued may file a petition with the Superior Court for a stay of this order.

Executed in _____ on _____

on behalf of the California Coastal Commission.

By: _____

Peter Douglas, Executive Director

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Nancy Cave
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code §27383

**NOTICE OF VIOLATION OF THE COASTAL ACT
(Public Resources Code Section 30812)**

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission.
2. A violation of the California Coastal Act of 1976 (Public Resources Code Section 30000, et seq.) has occurred involving those certain parcels of real property situated in the County of Santa Cruz, State of California, more particularly described as follows:

**Three parcels of land totaling 5.88 acres, at
Paso Cielo, La Selva Beach, Santa Cruz County
(Assessor's Parcel Numbers 045-022-25 = 2.46 acres, 045-022-27 = 1.75 acres,
and 045-022-30 = 1.67 acres)**

The violation consists of an attempted subdivision of 5.88 acres of property into three parcels (identified by the County Assessor as APNS 045-022-25, 045-022-27 and 045-022-30) without the authorization required by the California Coastal Act of 1976.

3. This property is located within the Coastal Zone as that term is defined in Section 30103 of the Coastal Act.
4. The record owners of said real property are: John J. and Julia D. King.

5. The violation of the Coastal Act (Violation File No. V-3-98-007) consists of the attempted unpermitted subdivision by John J. and Julia D. King into three parcels, which was not authorized in a Coastal Development Permit, in violation of the Coastal Act.
6. An application for a Coastal Development Permit to authorize any future development on the unpermitted parcels identified by the County Assessor as APNS 045-022-25, 045-022-27 and 045-022-30 cannot be accepted for filing unless there is evidence that the development is proposed for a parcel created in compliance with the Coastal Act.
7. The requirements set forth in Section 30812 for notice and recordation of this Notice of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.
8. The California Coastal Commission notified the record owner, John J. and Julia D. King, of its intent to record a Notice of Violation in this matter in a letter dated February 18, 2005.
 1. The Commission received a written objection to the recordation of the Notice of Violation on March 11, 2005 and conducted a public hearing on May 12, 2005. The Commission determined that a violation of the Coastal Act has occurred with this 3-lot subdivision. Therefore the Commission is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed in _____, California, on _____.

I declare under penalty of perjury that the foregoing is true and correct.

PETER DOUGLAS, Executive Director

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On this _____ day of _____, in the year _____, before me the undersigned
Notary Public, personally appeared Peter Douglas, personally known to me (or proved to me on
the basis of satisfactory evidence) to be the person who executed this instrument as Executive
Director of the California Coastal Commission and acknowledged to me that the California
Coastal Commission executed it.

Notary Public in and for Said State and County

Attachments and Exhibits

1. Statement of Defense (Exhibit A and Additional Attachments Nos. 1-62*)
2. Exhibit B – Letter dated April 7, 2005 from Deborah Kartiganer to Nancy Cave (and Additional Attachments A1-61*)
3. Exhibit C – Letter dated April 7, 2005 from Deborah Kartiganer to Nancy Cave
4. Exhibit D – Letter dated April 12, 2005 from Deborah Kartiganer to Nancy Cave
5. Exhibit E – Letter dated April 15, 2005 from Deborah Kartiganer to Nancy Cave (and Additional Attachments 1-7)
6. Exhibit F - Commission Staff Exhibits
 - 1) Location Map
 - 2) Map identifying Three Unpermitted Parcels
 - 3) Letter dated June 12, 2000 from Rahn Garcia, Assistant County Counsel to Richard Emigh, agent for John J. and Julia D. King
 - 4) Letter dated February 14, 2005 from Peter Douglas to John J. and Julia D. King
 - 5) Letter dated March 24, 1998 from Charles Lester, District Manager of Central Coast Commission Office to Santa Cruz County Planning Commission
 - 6) Resolution No. 76-640, page 3, Condition One
 - 7) Subdivision Approved in CDP –2034 (Two Parcels); 1976 Parcel Map (Four Parcels)
 - 8) Tentative Map 781
 - 9) P-79-117 Parcels approved by Commission
 - 10) Kings' Submittal before approval of CDP No. P-79-117
 - 11) Final Map (reduced 781)

***STAFF NOTE:** Exhibits A1-62 and B1-61 of the Staff Report are available for review at the Commission's office. Please contact Nancy Cave at 415-904-5290 to access the additional exhibits. They will also be available for review at the Commission hearing.